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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

December 20, 2000

Commander

Attn: Mr. Earl Estrella, (Code 06CM.EE)

Southwest Division, Naval Facilities Engineering Command

1220 Pacific Highway

San Diego, California 92132-5190

SUBJECT: EPA Comments on Draft Finding of Suitability for Early Transfer (FOSET) of the Eastern Early Transfer Parcel (EETP), December 4, 2000

Dear Mr. Estrella:

Thank you for providing to EPA the opportunity to comment on the Draft FOSET for the EETP at Mare Island. Our comments follow:

General Comments on the Draft FOSET for the EETP:

The FOSET needs to describe the Navy's ongoing role in the selection and implementation of remedial actions at this parcel. EPA is concerned that DoD's role as Lead Agency in remedy selection not be terminated by the transfer of title or that such authority be delegated to the transferee without a clear statement of the authority for such delegation. Under CERCLA and E.O. 12580, federal agencies are required to respond under CERCLA to releases of hazardous substances at their facilities. In addition, the President's authority to select response actions at department of defense facilities is delegated to the Secretary of Defense. As initially enacted, Section 120(h) required a covenant that all response actions had been taken prior to the transfer of federal property. To accommodate the desire of DoD to transfer title to property prior to cleanup, Section 120(h)(3)(C) was enacted to allow the deferral of the required covenant under certain specific conditions. In response to concerns that the early transfer of property would be used as a mechanism to avoid the federal agency's obligations under CERCLA, Section 120(h)(3)(C)(iv) provides that no deferral may "diminish or result in any change in any obligation of the federal agency"(including its obligations under Section 120). EPA believes that the FOSET should specifically describe how the Navy will participate in remedy selection and assure that all necessary response actions will be taken.

## Land Use Restrictions

The FOSET identifies a number of land use restrictions which EPA agrees are needed to protect human health and the environment. To meet the statutory requirements for the deferral, these restrictions need to be included in the deed from the Navy to the transferee. Although there may be other measures to enhance the effectiveness of the restriction, including a land use covenant between the State and the City, the restrictions should be included in the deed to provide the Navy with the ability to enforce the restrictions against subsequent property owners as part of their ongoing responsibility to protect human health and the environment. In addition, the FOSET should describe the scope of the restrictions which will be in effect during the deferral period as well as describing the restrictions which are expected to remain in effect indefinitely.

## Military Munitions

The FOSET needs to describe the regulatory authorities applicable to military munitions, including UXO. EPA believes that information concerning military munitions, including UXO, which is included in the FOSET, indicate that there has been a release of hazardous substances under CERCLA. In addition, some of the material may also be regulated as hazardous waste under federal and state law. The FOSET needs to describe the manner in which the Navy will address the material for which it has retained responsibility in order to provide the Response Action Assurance, including a schedule and funding commitment under which the response will be accomplished.

## PCBs

The FOSET describes a number of buildings where PCBs have been identified. In most cases, it appears that the PCB contamination is the result of spills or releases of liquids containing PCBs. Since CERCLA does not address releases which are contained within structures, this letter does not address the adequacy of the actions conducted by the Navy to address PCBs within the buildings. The information present in the FOSET does not indicate whether the Navy has complied with the provisions of TSCA which prohibit the transfer ("distribution in commerce") of any PCBs or material containing PCBs (see 40 CFR § 761.20(c)). Buildings containing PCBs are included in this prohibition unless such building is decontaminated in accordance with the current regulations. Because the contamination is the result of past spills and cleanup did not occur within the first 72 hours after the spill the applicable regulations in this case are 40 CFR § 761.61 (PCB Remediation Waste) and 40 CFR § 761 Subpart N (Cleanup Site Characterization Sampling for PCB Remediation Waste). These particular TSCA regulations became effective on June 29, 1998.

Questions concerning the TSCA requirements for the transfer of these buildings, should be directed to EPA Region IX's PCB coordinator, Max Weintraub. Mr. Weintraub can be reached at (415) 744-1129.

Thank you for the opportunity to review the document. We look forward to discussing our comments with you.

Sincerely,



Emily Roth  
EPA Project Manager

cc:

Jerry Dunaway, USNavy  
Chip Gribble, CA DTSC  
Michael Rochette, RWQCB